IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.2.2006

CORAM :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (A) No.201 of 2003

Commissioner of Income Tax-III,
Chennai ...Appellant

-Vs-

M/s.Premier Tobacco Packers Pvt.Ltd.,
Chennai ... Respondent

Prayer: Appeal filed under Section 260-A of the Income Tax Act 1961 against the order of the Income Tax Appellate Tribunal Madras 'A' Bench dated 22.5.2003 in I.T.A.No. 433, 1856/Mds/95 for the assessment year 1990-91 against the order of the Commissioner of Income Tax (Appeals) VII, Madras 34 dated 29.6.1995 in ITA No.65/92-93 against the order of the Deputy Commissioner of Income Tax Special Range VII Madras 34 dated 10.3.1992 PAN/GIR No.47-064-CT-0181.

For Appellant : Mrs.Pushya Sitaraman

O R D E R

(Order of the Court was made by P.D.DINAKARAN, J.)

Heard. The above appeal is directed under Section 260-A of the Income Tax Act 1961 against against the order of the Income Tax Appellate Tribunal Madras 'A' Bench dated 22.5.2003 in I.T.A.No. 433, 1856/Mds/95.

2. The facts in brief are : The assessee company is engaged in the activity of processing tobacco for others. This is known as thrashing. The assessee filed its return of income on 28.12.1990 admitting an income of Rs.32,57,510/- and claimed deduction under Section 80HH on the ground that the assessee's activity of thrashing and re-drying of tobacco leaves amounts to manufacture or production. The assessing officer, disallowed the above claim. On appeal by the assessee, the Appellate

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Commissioner of Income Tax, following the earlier orders of the Tribunal, allowed the appeal and answered the issue in favour of the assessee. Hence, the Revenue went on appeal and the Appellate Tribunal, confirmed the order of the Commissioner of Income Tax (Appeals) following its earlier order on the ground that the assessee's activity falls within the purview of the manufacture or production and dismissed the appeal.

3. Aggrieved by the said order of the appellate Tribunal, the Revenue has filed the above appeal and raised the following substantial questions of law:-

> 1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled to deduction under Section 80HH?
>
> 2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the threshing and redrying of tobacco leaves amounts to manufacture and production.?"

4. It is fairly conceded by the learned counsel appearing for the Revenue that the issue involved in the above questions is covered by the decision of the Supreme Court rendered in Aspinwall and Co.Ltd., vs. Commissioner of Income Tax(251 ITR 323).

5. The word 'manufacture' has not been defined in the Income-tax Act. In the absence of a definition, the word 'manufacture' has to be given a meaning as is understood in common parlance. It is to be understood as meaning the production of articles for use from raw or prepared materials by giving such materials new forms, qualities or combinations whether by hand labour or machines. If the change made in the article results in a new and different article then it would amount to manufacturing activity.

6. Though the assessee was doing only the processing work and was not involved in the manufacture, the process is a manufacturing process when it brings out a complete transformation in the original article so as to produce a commercially different article or commodity. That process itself may consist of several processes. The different processes are integrally connected which results in the production of a commercially different article. If a commercially different article or commodity result after processing then it would be a manufacturing activity. The assessee after thrashing and re-drying, which is called as Virginia Flue-Cured Tobacco(VFT) in commercial parlance, converts them into Lamina and N.R.Stems etc. The end product is used in the manufacture of cigarettes and that the raw materials namely Virginia Flue-cured Tobacco(VFT) could not be used directly in the manufacture of cigarettes. The assessee after processing the raw

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Virginia Flue-cured Tobacco converts them into Tobacco which is a commercially different commodity. Conversion of the Virginia Flue-cured Tobacco into Tobacco would be a manufacturing activity.

7. The Supreme Court in the decision cited supra, held that the assessee after plucking or receiving the raw coffee berries made them undergo nine processes to give them the shape of coffee beans. The final produce was absolutely different and separate from the input. The change made in the article resulted in a new and different article which was recognised in the trade as a new and distinct commodity. The coffee beans had an independent identity from the raw material from which they were produced. Conversion of the raw berry into coffee beans was a manufacturing activity. The assessee was, therefore, entitled to the investment allowance under Section 32A.

8. In view of the foregoing conclusion, we do not find any error or infirmity in the order of the Tribunal and no question of law much less a substantial question of law that arises for consideration of this Court. Hence, the appeal is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

msk

To

1.The Assistant Registrar,Income Tax
Appellate Tribunal, Madras Bench "A".
Rajaji Bhavan III Floor, Besant Nagar,
Chennai-90.

2.The Secretary, Central Board of
Direct Taxes, New Delhi.

3.The Commissioner of Income Tax- VII
(Appeals) V, 121, Mahatma Gandhi
Road, Chennai-600 034.

4.The Deputy Commissioner of Income-tax,
Spl. Range VII, Madras.34

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5. The Commissioner of Income Tax III
Chennai -34

1 cc to Mr.S. Sridhar, Advocate, Sr. 6563
1 cc to Mr.Pushya Sitaraman, Advocate, SR. 6444

T.C.(A)No.201 of 2003

TEJ (CO)
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